

DHMH POLICY

<http://dhmh.maryland.gov/Pages/op02.aspx>

OFFICE OF EQUAL OPPORTUNITY PROGRAMS

DHMH POLICY 01.02.03
Effective Date: August 2, 2016

DISCRIMINATION COMPLAINTS

I. EXECUTIVE SUMMARY

The Department of Health and Mental Hygiene (DHMH) intends that all of its employees and candidates for employment receive fair and impartial treatment in all phases of employment. DHMH shall provide a formal complaint process for employees and/or potential employees who choose to file complaints alleging discrimination in employment.

The Federal and State codes and regulations cited mandate that the Department have a policy to respond to discrimination complaints, and roles and responsibilities necessary for implementing this requirement are discussed. Guidance on who may file a complaint, what information must be included, timing requirements, where to file, and information on follow-up activities such as acknowledgement, investigations, case review, conciliation, appeal, and remedial actions are provided. Finally, prohibited behaviors are discussed, such as reprisals and providing false or misleading information.

II BACKGROUND

This version, effective August 2, 2016, supersedes and recodifies DHMH 02.06.03 dated March 18, 1998 which had been originally promulgated as DHMH 2.13 Policy on Complaints of Alleged Discrimination in Connection with Employment in April 1975.

The major changes resulting from this revision are:

- 1) Recodification of the policy to be DHMH 01.02.03;
- 2) Reorganization of information to conform to the standard DHMH policy format;
- 3) Inclusion of web links to referenced materials;
- 4) Update of protected bases;
- 5) Additional information on complaint filing and timelines; and
- 6) A rewriting of the Executive Summary and Background Sections to reflect current structure.

Department of Health & Mental Hygiene

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III. POLICY STATEMENTS

A. AUTHORITY.

- Annotated Code of Maryland
 - State Personnel and Pensions Article, §§5-207(c) and 5-211(b)
- Code of Maryland Regulations (COMAR)
 - COMAR 17.04.08.03B
 - COMAR 17.04.08.04

B. DEFINITIONS.

1. **“Complainant”** means a person making a complaint alleging a violation of Federal or State employment discrimination laws, but shall not include an OEOP staff member when making a complaint on behalf of an employee or of a complaint in his or her official capacity.
2. **“Discrimination in Employment”** means:
 - a. Failure or refusal to hire or discharge any individual or otherwise discriminate against any individual with respect to terms, conditions and benefits of employment because of an individual's race, color, religious affiliation, belief or opinion, age, sex, disability, national origin, ancestry, creed, gender identity and expression, genetic information, marital status, sexual orientation or other non-merit factor, except where sex, age, or physical or mental disability are bona fide qualifications of employment;
 - b. Limitation, segregation, or classification of employees in any way that would:
 - i. Deprive or tend to deprive an individual of employment opportunities; and
 - ii. Otherwise adversely affect the status of an employee because of such individual's race, color, religious affiliation, belief or opinion, age, sex, disability, national origin, ancestry, creed, gender identity and expression, genetic information, marital status, sexual orientation or other non-merit factor, except where sex, age, or physical or mental disability are bona fide qualifications of employment; or
 - c. Abuse, restraint, intimidation, harassment, interference with, coercion, discrimination against, reprisals against, or other offense against an employee or applicant for employment because of an individual's race,

color, religious affiliation, belief or opinion, age, sex, disability, national origin, ancestry, creed, gender identity and expression, genetic information, marital status, sexual orientation or other non-merit factor.

3. **“Fair Practices Officer”** means the Executive Director of the Office of Equal Opportunity Programs (OEOP) or a designee specifically appointed by the Fair Practices Officer to act on OEOP’s behalf during a specific investigation.
4. **“Investigation”** means an efficient inquiry, interrogation and examination of discriminatory employment practices pursuant to the State Personnel and Pensions Article, §5-207(c); Annotated Code of Maryland, and COMAR 17.04.08.04.
5. **“Party”** means a complainant or a respondent.
6. **“Respondent”** means a person, agency, or part of an agency accused of discriminatory conduct in connection with employment.

D. COMPLAINTS.

1. WHO MAY MAKE A COMPLAINT?

- a. Any person alleging to being aggrieved by unlawful discrimination under the Equal Employment Opportunity (EEO) legal mandates adhered to by DHMH may file a complaint with the Fair Practices Officer or designee.
- b. A complaint that any department, division, unit, or person has or is engaged in unlawful discrimination under the EEO legal mandates adhered to by DHMH may be made on behalf of any person. The person making the complaint must provide the OEOP with the information outlined under the Complaints Section, D.3, of this policy.
- c. The Fair Practices Officer or designee may make and file a complaint, in its name, in the same manner as if the complaint had been filed by an individual, when it has received reliable information that an individual has engaged in or is engaging in an unlawful discriminatory practice, as defined under the EEO mandates adhered to by DHMH. All such complaints shall be over the signature of the OEOP Executive Director.

2. COMPLAINT FORM.

- a. A complaint shall be filed on a form provided by the OEOP, by letter, or by other written means.
- b. Complaint forms will be made available to persons at all DHMH locations, online, via email, fax or mail, or at the OEOP.

c. Complaints filed on forms provided by other agencies and/or organizations, such as the Department of Budget and Management's (DBM) Office of the Statewide Equal Employment Opportunity Coordinator (OSEEOC), Equal Employment Opportunity Commission (EEOC) or the Maryland Commission on Civil Rights (MCCR), shall be deemed complaints filed with the Fair Practices Officer.

3. CONTENTS OF COMPLAINTS.

Each complaint shall contain the following:

a. The full name and address of the person(s) making the complaint. This person shall hereinafter be referred to as the "complainant".

b. The full name and address of the department, division, unit, or person(s) against whom the complaint is made. The above named shall hereinafter be referred to as the respondent.

c. A clear and concise statement of facts constituting the alleged act(s) of discrimination, including possible pertinent dates.

d. A statement as to whether the race, color, religious affiliation, belief or opinion, age, sex, disability, national origin, ancestry, creed, gender identity and expression, genetic information, marital status, sexual orientation of the complainant gave rise to the alleged discrimination.

e. The signature of the complainant and date on the original.

4. PERMITTED AMENDMENTS OF COMPLAINTS.

Notwithstanding the provisions of paragraph three of this section, a complaint is deemed filed when the Fair Practices Officer or designee receives a written statement sufficiently precise to identify the parties and to describe generally the action(s) complained of. A complaint may be amended by the Fair Practices Officer or the designee, after approval from the complainant, as follows:

a. To cure technical defects or omissions;

b. To clarify and amplify allegations made therein; or,

c. To allege additional acts that constitute unlawful discrimination, under EEO legal mandates, adhered to by DHMH that are related to the subject matter of the original filing date.

5. TIMELY FILING OF COMPLAINTS.

Consistent with the State Personnel and Pensions Article, §5-211(b), Annotated Code of Maryland, and COMAR 17.04.08.03B, the complaint shall be filed within 30 days after the complainant first knew or reasonably should have known of the alleged violation that is the basis for the complaint. If the alleged, unlawful,

discriminatory practice is alleged to be of a continuing nature, the date of the occurrence of said unlawful practice shall be deemed to be any date after the first knowledge of the alleged unlawful practice, up to and including the date when the alleged unlawful practice may have ceased.

6. MANNER OF FILING A COMPLAINT.

- a. The complaint may be filed by personal delivery, ordinary mail, email or fax to OEOP, or with any representative of OEOP.
- b. A complaint filed with a Federal, State, or local civil rights agency within the timeframe specified in Section D of this policy shall be deemed as compliant with that rule.

7. WITHDRAWAL OF A COMPLAINT.

- a. A complaint filed by the alleged aggrieved person or on behalf of the alleged aggrieved person, may be withdrawn with the consent of the Executive Director to ensure there is no retaliation, to ensure no party was coerced or forced to withdraw the complaint, and to ensure the all parties understand his/her rights in the process.
- b. A complaint filed by the OEOP may only be withdrawn with the consent of the Executive Director.

8. SERVICE OF A COMPLAINT.

Within 10 working days after a complaint is filed, the Fair Practices Officer or designee shall acknowledge receipt by informing all parties in writing.

E. INVESTIGATIONS.

1. Consistent with the State Personnel and Pensions Article, § 5-207(c)(2), Annotated Code of Maryland, and COMAR 17.04.08.04B, the Fair Practices Officer or designee shall investigate or cause an investigation to ascertain all facts surrounding the allegation(s).

- a. The staff shall initially solicit information from all parties and utilize interrogatories or depositions to facilitate a prompt investigation.
- b. In the event that any party refuses to comply with a request, for information by the Fair Practices Officer in furtherance of an investigation, or refuses to answer an interrogatory by the staff of OEOP, the OEOP may:
 - i. Draw an adverse inference that the requested information would have reflected unfavorably on the party failing to provide it;

- ii. Consider the allegations relating to the requested information or testimony to be established in favor of the opposing party;
- iii. Exclude other evidence offered by the party failing to produce the requested information or witness;
- iv. Issue a decision fully or partially in favor of the opposing party; or
- v. Take any other action the decision maker considers appropriate under the circumstances.

2. At the discretion of the Executive Director of OEOP, administrative intervention may be requested to obtain answers to interrogatories and any other inquires. No coercion or administrative sanction may be applied to require an answer from a person who refuses to answer on the premise that to do so may incriminate him/her.

3. CONFIDENTIALITY.

a. Confidentiality is vital during the course of an investigation; however, confidentiality cannot always be guaranteed. Certain information provided, such as specific incidents, may identify certain parties in a complaint. OEOP exercises the utmost discretion during an investigation.

b. Nothing in this rule shall prevent the giving of evidence or the answering of inquiries submitted by a party or OEOP staff, during the course of an investigation. However, all parties participating in the EEO complaint process must adhere to the laws, policies and procedures of their unit/department/office/Board/Commission, or the like, when submitting documentation as evidence. This may require the redaction of documents and/or approval to remove/copy/redact/submit documents that contain information concerning non-participants in the EEO process, such as citizens of the State of Maryland.

c. Upon resolution of any complaint, the findings and results of the investigation may be made public, upon approval by the Secretary of such findings and results.

F. CONCILIATION.

1. In conciliating a case in which a determination of probable cause has been made, the Fair Practices Officer or designee shall attempt to achieve a just resolution. Disposition of a case pursuant to this section shall be in writing, and notice thereof shall be sent to all appropriate parties.

2. Should the accused party or parties fail or refuse to confer with OEOP or fail or refuse to make a good faith effort to resolve any dispute, OEOP may terminate its efforts to resolve the dispute. In such event, the accused party or

parties shall be notified promptly in writing that such efforts have been unsuccessful and will not be resumed except upon the accused party or parties written request, within the time specified on such notice. If no request is forthcoming within the specified time, the Fair Practices Officer shall proceed as outlined in Section J of this policy, and COMAR 17.04.08.04C.

G. CASE REVIEW.

1. In case of failure to settle or adjust a complaint by conciliation and conference, the OEOP Executive Director shall request that the Secretary, DHMH, or designee, review the merits of the OEOP findings as it relates to the EEO standards and regulations of DHMH, and EEO legal mandates adhered to by DHMH.
2. If the review by the Secretary, or designee, finds that an unlawful practice is being or has been committed, appropriate action shall be taken. All orders shall be in writing and shall have the signature of the Secretary. A copy of all orders shall be written and shall be sent to the complainant, the accused party or parties, and the Fair Practices Officer.
3. If the review finds that a discriminatory act has not been committed, the findings of that decision shall be issued.

H. APPEALS.

1. The Fair Practices Officer or designee shall notify all parties of their right to appeal the written findings within 10 days of date of issue by filing an appeal with the:

Department of Budget and Management
Office of the Statewide Equal Employment Opportunity Coordinator
301 West Preston Street, Room 607
Baltimore, MD 21201.

2. If additional evidence is provided by the appeal that warrants a further investigation, it shall be so ordered by the Executive Director, OEOP. If additional evidence is not provided, the Executive Director shall follow the procedure outlined in Section J of this policy.

I. REMEDIAL ACTION.

1. After a determination that an unlawful employment activity occurred, sanctions, up to and including termination may be taken against the party or parties who engaged in the discriminatory practice. Each case is a case of one, and personnel decisions will be based on severity, frequency, and current disciplinary track of the violating party or parties.

2. Sanctions permitted by Section K of this policy, as a result of breach of confidentiality, false or frivolous complaint, or willful giving of false or misleading information during the course of an investigation may be imposed.

J. COMPLIANCE REVIEW.

At the expiration of one year from the date of a conciliation agreement, and at other times if reasonable in OEOP's discretion, the OEOP shall investigate or determine if the terms of the agreement have been and are being complied with by the accused party or parties. If the agreement has been violated or is being violated, the Fair Practices Officer may extend the review period for 12 months and require the accused party or parties to submit monthly progress reports.

K. PROHIBITIONS.

1. REPRISALS.

No complainant and/or participants in the EEO process shall be subjected to restraint, intimidation, harassment, interference, coercion, discrimination or reprisal. Upon notification of any such action, the OEOP shall investigate such complaint and the findings of the facts will be forwarded to the Secretary, with recommendations for immediate remedial action, if applicable.

2. FRIVOLOUS OR FALSE COMPLAINTS AND GIVING FALSE AND MISLEADING INFORMATION DURING AN INVESTIGATION.

Any employee of DHMH who deliberately makes a frivolous or false complaint under these rules and/or who deliberately gives false or misleading information during the course of an investigation under these rules shall be subject to disciplinary proceedings under the State Personnel Management System, applicable to DHMH.

L. NOTICE OF RIGHTS.

1. Any employee or applicant for employment, who believes that he or she has been discriminated against, has a right to file a complaint with the State or Federal agency listed below. *A person does not give up this right when he or she files a complaint with the DHMH Office of Equal Opportunity Programs.* The following State and Federal agencies enforce laws related to discrimination:

Maryland Commission on Civil Rights (MCCR)
6 St. Paul Street, 9th Floor
Baltimore, Maryland 21201
Phone: 410-767-8600

United States Equal Employment Opportunity Commission (EEOC)
10 South Howard Street, 3rd Floor
Baltimore, Maryland 21201
Phone: 410-962-3932

2. An individual may file a complaint with the DHMH Office of Equal Opportunity Programs (OEO), MCCR and the EEOC, *simultaneously*.
3. A complainant or a member of the Office of Equal Opportunity Programs may request, in writing, to extend the time needed for completion of the investigation and decision, at any time during the investigation.

M. TIMELINES.

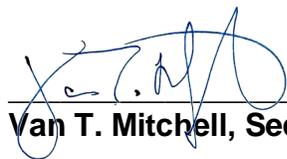
1. **State Fair Practices/EEO Offices (i.e., DHMH Office of Equal Opportunity Programs)**—within 30 days after first knowledge or reasonably knowing (State Personnel and Pensions Article, §5-211(b), Annotated Code of Maryland).
2. **Maryland Commission on Civil Rights (MCCR)**—6 months (State Government Article, Title 20, Annotated Code of Maryland).
3. **United States Equal Employment Opportunity Commission (EEOC)**—180 calendar days from the day the discrimination took place; 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis.
(<https://www.eeoc.gov/employees/timeliness.cfm>).

IV. REFERENCES

- The Age Discrimination in Employment Act (ADEA) of 1967, as amended
<https://www.eeoc.gov/laws/statutes/adea.cfm>
- Annotated Code of Maryland
 - State Government Article, Title 20
<http://mgaleg.maryland.gov/webmga/fmStatutesText.aspx?article=gsg§ion=20-101&ext=html&session=2015RS&tab=subject5>
 - State Personnel and Pensions Article, §5-207(c)
<http://mgaleg.maryland.gov/webmga/fmStatutesText.aspx?article=gsp§ion=5-207&ext=html&session=2015RS&tab=subject5>
 - State Personnel and Pensions Article, §5-211(b)
<http://mgaleg.maryland.gov/webmga/fmStatutesText.aspx?article=gsp§ion=5-211&ext=html&session=2015RS&tab=subject5>
 - State Personnel and Pensions Article, §5-212
<http://mgaleg.maryland.gov/webmga/fmStatutesText.aspx?article=gsp§ion=5-212&ext=html&session=2015RS&tab=subject5>

- Americans with Disabilities Act Amendments Act (ADAAA) of 2008
https://www.eeoc.gov/laws/statutes/adaaa_info.cfm
- Code of Maryland Regulation (COMAR)
 - Executive Order 01.01.2007.16, Governor's Code of Fair Employment Practices
<http://www.dsd.state.md.us/comar/comarhtml/01/01.01.2007.16.htm>
 - COMAR 17.04.08
http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=17.04.08.*
 - COMAR 17.04.08.03B
<http://www.dsd.state.md.us/comar/comarhtml/17/17.04.08.03.htm>
 - COMAR 17.04.08.04C
<http://www.dsd.state.md.us/comar/comarhtml/17/17.04.08.04.htm>
- Civil Rights Act of 1964, as amended
<https://www.eeoc.gov/laws/statutes/titlevii.cfm>
- Equal Pay Act of 1963, as amended
<https://www.eeoc.gov/laws/statutes/epa.cfm>
- Genetic Information nondiscrimination Act (GINA) of 2008
<https://www.eeoc.gov/laws/statutes/gina.cfm>
- Maryland Department of Budget and Management's Office of the Statewide Equal Employment Opportunity Coordinator, Equal Employment Opportunity Complaint Procedure
<http://www.dbm.maryland.gov/eo/Pages/EEOFileComplaint.aspx>

APPROVED:



Van T. Mitchell, Secretary

August 2, 2016
Effective Date